

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**ERIC ROGERS,**

**Plaintiff,**

**-against-**

**JACK’S COFFEE, LLC, ET AL.,**

**Defendants.**  
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**18-CV-10021 (ALC)**

**ORDER**

**ANDREW L. CARTER, JR., District Judge:**

On July 8, 2019, Plaintiff filed a proposed default judgment and supporting affirmation. ECF Nos. 15-16. The Court subsequently issued an order directing Defendant 138-140 Village Owners Corp. to show cause why default judgment should not be entered. ECF No. 19. However, Plaintiff had not filed a motion for default judgment nor the “memorandum providing the legal and factual authority proving that liability has been established” as required by Judge Carter’s Individual Practices. Thus, by order dated October 29, 2020 this Court vacated its prior order to show cause and ordered Plaintiff to submit the required motion and memorandum by November 6, 2020. ECF No. 22. Plaintiff submitted the motion and memorandum, ECF Nos. 24, 27, and the Court issued an order directing Defendant 138-140 Village Owners Corp. to show cause why default judgment should not be entered pursuant to Fed. R. Civ. P. 55. ECF No. 28. To date, Defendant 138-140 Village Owners Corp. has not responded.

On April 21, 2021, the Court granted Plaintiff leave to file an amended complaint substituting Defendant Jack’s Coffee, LLC with Defendant Jack’s Holding (FVP) LLC, which Plaintiff filed the same day. ECF Nos. 43-44. Accordingly, Plaintiff’s pending motion for default

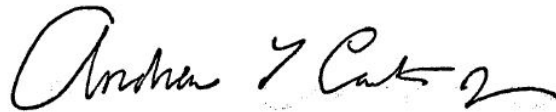
judgment is **DENIED**. *See Allstate Ins. Co. v. Yadgarov*, No. 11-cv-6187, 2014 WL 860019, at \*7-8 (E.D.N.Y. Mar. 5, 2014) (collecting cases) (“[A]n amended pleading excused from service on a defaulting defendant by FRCP 5(a)(2) becomes the operative document on filing, not on service. . . . [O]nce the amended complaint becomes the operative complaint, a motion for default judgment made on a prior pleading should be denied.” (internal citations omitted)).

### **CONCLUSION**

For the reasons herein, Plaintiff’s pending motion for default judgment is **DENIED**. The Clerk of Court is respectfully directed to terminate ECF No. 24. Plaintiff is directed to serve a copy of the instant order on Defendants, and file proof of service, by no later than May 28, 2021.

**SO ORDERED.**

**Dated:**           **May 21, 2021**  
                      **New York, New York**

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written in a cursive style.

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**ANDREW L. CARTER, JR.**  
**United States District Judge**